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action must fail because an assignment was not a breach of the covenant against subletting. *Goldman v. Daniel Feder & Co.* (1919, W. Va.) 100 S. E. 400.

A transfer by the lessee of an estate less than his own, leaving a reversion in himself, is a sublease. *Stewart v. Long Island Ry.* (1886) 102 N. Y. 601, 8 N. E. 200; *St. Joseph & St. L. Ry. v. St. Louis, I. M. & S. Ry.* (1896) 135 Mo. 173, 36 S. W. 602. But a transfer of the lessee's entire interest in the whole of the premises is an assignment. *Craig v. Summers* (1891) 47 Minn. 189, 49 N. W. 742; *Hogg v. Reynolds* (1901) 61 Neb. 758, 86 N. W. 479. In the absence of a statute, a sublessee can maintain no action against the original lessor for a breach of a covenant in the lease. *Ganson v. Tift* (1877) 71 N. Y. 48. And he is not liable to the lessor on the covenants of the original lease. *McFarlan v. Watson* (1850) 3 N. Y. 286; *Dunlap v. Bullard* (1881) 131 Mass. 161. But the assignee of a lease gets the benefits of any covenants of the original lease, and can sue the lessor direct for any breach which occurs during the period of his ownership. *McClenahan v. Gwynn* (1811, Va.) 3 Munf. 556; *Cleveland C. C. & St. L. Ry. v. Wood* (1901) 189 Ill. 352, 59 N. E. 619. And he is liable to the lessor for breaches of the lessee's covenants which occurred after the assignment. *Howland v. Coffin* (1831) 29 Mass. 125; *Salisbury v. Shirley* (1884) 66 Calif. 223, 5 Pac. 104. In the absence of a statutory prohibition or of a provision in the lease to the contrary, a lessee is privileged to assign or to sublet. *Ray v. Johnson* (1893) 98 Mich. 34, 56 N. W. 1048; *Crowe v. Riley* (1900) 63 Oh. St. 1, 57 N. E. 956. But a provision of the lease expressly denying the power to assign or sublet is valid. *Indianapolis Manufacturing Carpenters' Union v. Cleveland C. C. & I. Ry.* (1873) 45 Ind. 281; *Shannon v. Grundstaff* (1895) 11 Wash. 536, 40 Pac. 123. However, restraints upon alienation are strictly construed against the lessor. *Hilsendegen v. Hartz Clothing Co.* (1911) 165 Mich. 255, 130 N. W. 646; *Burns v. Dufresne* (1912) 67 Wash. 158, 121 Pac. 46; see (1920) 29 YALE LAW JOURNAL, 360. Accordingly, a subletting is not a breach of a covenant not to assign. *Hargrave v. King* (1848) 40 N. C. 430; *Moore v. Guardian Trust Co.* (1903) 173 Mo. 218, 73 S. W. 143. The instant case, in holding the converse, is in accord with the great weight of authority. *Lynde v. Hough* (1857, N. Y. Sup. Ct.) 27 Barb. 415; *Burns v. Dufresne* (1912) 67 Wash. 158, 121 Pac. 46. And because of the substantial differences between an assignment and a sublease, such a construction is submitted to be sound.

MARRIAGE AND DIVORCE—ANNULMENT—ALIMONY PENDENTE LITE AND COUNSEL FEES—SUIT BY RELATIVES OF DECEASED HUSBAND.—The plaintiffs, relatives of a deceased husband, sought to annul his marriage with the defendant under section 1747 of the Code of Civil Procedure, which allows a relative who has an interest to avoid a marriage to sue for annulment on the ground of lunacy after the death of the lunatic and during the life of the other spouse. The statute is silent as to alimony and counsel fees. The defendant asked for alimony *pendente lite* and counsel fees. An allowance was made by the lower court out of a trust fund of which the deceased was the life-tenant, with remainder to his heirs-at-law and next of kin, the trustee, however, not being a party to this suit. *Held* (two judges dissenting), that alimony and counsel fees should be denied. *Farnham v. Farnham* (1919, N. Y.) 124 N. E. 894.

The question of the allowance of alimony *pendente lite* and counsel fees to the wife depends on whether the marriage was valid, and which party brings the action. It is agreed by the courts that if it is admitted that the marriage is void *ab initio*, temporary alimony and counsel fees will not be allowed. *Sinclair v. Sinclair* (1898, Ct. Err.) 57 N. J. Eq. 222, 40 Atl. 679; *Knott v. Knott* (1902, N. J. Ch.) 51 Atl. 15. Where the husband brings an action for annulment and the wife insists that the marriage is valid, alimony *pendente lite* and counsel

fees will be allowed on the theory that the marriage remains valid until the court declares it invalid. *Vroom v. Marsh* (1878, Ct. Err.) 29 N. J. Eq. 15; *North v. North* (1845, N. Y.) 1 Barb. Ch. 241, 43 Amer. Dec. 778; *Ricard v. Ricard* (1909) 143 Iowa, 182, 121 N. W. 525, 26 L. R. A. (N. S.) 500, note. But where the action is brought by the wife, the majority of courts refuse to allow her temporary alimony and counsel fees on the ground that the wife is estopped to claim support by her allegations that the marriage is a nullity. *Bloodgood v. Bloodgood* (1880, N. Y. Sup. Ct.) 59 How. Prac. 42; *Jones v. Brinsmade* (1905) 183 N. Y. 258, 76 N. E. 22, 3 L. R. A. (N. S.) 192, note. A very strong minority attacks this estoppel theory and allows alimony and counsel fees to the wife where she institutes the suit. *Allen v. Allen* (1880, N. Y. Sup. Ct.) 59 How. Prac. 27; *Lea v. Lea* (1889) 104 N. C. 603, 10 S. E. 488. The request for alimony by the defendant in the instant case is novel because the suit is brought after the death of the husband by his relatives. In an action by a parent to annul the marriage of her infant son, alimony was not allowed to the defendant, on the ground that the plaintiff was a stranger to the defendant as far as alimony is concerned. *Stivers v. Wise* (1897) 18 App. Div. 316, 46 N. Y. Supp. 9. Though the statute under which the suit in the principal case was brought, does not provide for alimony, the court could have made compliance with an order directing alimony a condition precedent to the decree of annulment, since it was an equitable action. The majority of the court argued, however, that alimony is based on the duty of the husband to support his wife; that the duty ceases on his death; and that the relatives being strangers to the wife, there is no reason to make such a requirement. The dissent contended that the action was more than a mere attempt to obtain property, since it attacked defendant's status as a lawful wife and the legitimacy of her child (But the Code of Civil Procedure allows the court to declare a child legitimate) and the child's inheritance; and that therefore the relatives who made such an attack in the hope of pecuniary gain should be subjected to the liability of counsel fees, as the husband would be if he were alive and bringing the suit. This argument seems very persuasive, though it is not clear how the order directing the payment from the trust fund can be justified, the trustee not being a party to the suit.

MUNICIPAL CORPORATIONS—RAILROAD CROSSINGS—LIABILITY FOR DAMAGE.—The plaintiff owned certain lots on the Milwaukee side of a street, the center line of which was the boundary between the town of Lake and the city of Milwaukee. He brought this action to recover damages for the removal of soil occasioned by cutting down the level of the street so as to make it run under the tracks of the defendant's intersecting railroad. The city charter conferred power on the city council "to require railroad companies to construct at their own expense such bridges . . . tunnels, etc., at public railroad crossings as the city council might deem necessary." The construction of the subway had been authorized by an ordinance in which extended privileges were granted the railroad on condition that it construct several subway crossings of which this was one. The ordinance expressly provided that the defendant "should be at no cost or expense for any work outside of its right of way." *Held*, that the plaintiff should recover. *Application of Kaiser* (1919, Wis.) 174 N. W. 714.

The court found no difficulty with the claim of the plaintiff to damages, so the only question was whether the city or the railroad was under a duty to pay same. The decision rested entirely on the interpretation given to a similar charter provision in a previous case. *Superior v. Roemer* (1913) 154 Wis. 345, 141 N. W. 250. The court there held that the charter provision gave the city power to authorize construction only at the expense of the railroad and that the city had no power to assume a duty to pay any part of the expense. That